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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

TEODORO LAGUATAN, Plaintiff and Appellant, v. CARMELITA S. PABLO et al., Defendants and Respondents.	A152115, A153350 (San Mateo County Super. Ct. No. PRO126196)

This appeal involves a will contest between decedent Rudolfo Follosco's cousins, Carmelita Pablo and Roy Pablo, and Follosco's long-time friend, Teodoro Laguatan, an attorney who appeared in propia persona throughout these proceedings. In February 2015, Follosco executed a holographic will which left most of his estate to the Pablos. In September 2015, Follosco executed a new will which reduced the bequests to the Pablos and left the residue to Laguatan to "manage and dispose of . . . in accordance with Christian humanitarian principles." Following Follosco's death in October 2015, Laguatan petitioned to probate the September 2015 will, and the Pablos filed a competing petition to probate the earlier February 2015 holographic will. Following a bench trial, the trial court denied Laguatan's petition and sustained the Pablos' objections that Follosco was unduly influenced and lacked testamentary capacity. The holographic will was admitted to probate. The trial court also awarded the Pablos attorney fees and costs. We affirm.

BACKGROUND

Many of the following facts are taken from the trial court's final statement of decision.

On February 16, 2015, Follosco executed a holographic will while recuperating from heart surgery in Arkansas. The holographic will named as co-executors his cousins, siblings Carmelita Pablo and Roy Pablo, and his close friend of 30 years, Teodoro Laguatan, a California-licensed immigration attorney. It directed Follosco's assets be liquidated and the proceeds distributed among a number of specific individuals, including the Pablos who were the primary beneficiaries. Any residue was to be divided equally between the Pablos and other named beneficiaries. Laguatan was not a beneficiary under the holographic will.

On September 12, 2015, a couple of days after he returned to California from Arkansas, Follosco was admitted to a local hospital where doctors diagnosed him with a series of ailments, including senility, sepsis, pneumonia, and heart failure.

On September 20, 2015, Follosco asked to see Laguatan. That evening, Laguatan and his wife visited. Follosco's girlfriend, Jenny Zamora, was there. Follosco told Laguatan he wanted to change his will. Laguatan's wife and Zamora left the room, and Follosco and Laguatan discussed the will alone.

Laguatan informed Follosco he was not a probate lawyer but could simply dictate his friend's desires, like a facilitator, and then have a probate lawyer draft the will. Laguatan took notes of the changes Follosco wanted to his will. According to Laguatan, Follosco told Laguatan he wanted his residuals to go to orphan children, poor old people, and the homeless in the Philippines, but they had no time that evening to research specific charities. Follosco never explained his reasons for the changes.

On September 21, 2015, Laguatan sent Robert Ferris, a probate attorney whose office was in the same building as Laguatan's, an email, stating, "Here are the details for the will of my friend who may pass away at any time. I leave it to you to put it in the proper format." The email reflected Follosco's intent as dictated to Laguatan and captured in his notes. Laguatan's email listed dispositive terms of the new will and

instructed Ferris to "[i]nclude these phrases: [¶] . . . [¶] Residuary estate—if on the other hand I still have some assets or residue left that has not been disposed or some undiscovered assets, I leave these to my primary Executor Atty. Teodoro (Ted) Laguatan whom I completely trust—to manage and dispose of these using his judicious prudent [sic] judgement according to guidelines relating to Christian humanitarian charitable principles which we both agree on and accede to." After preparing the email, Laguatan threw his notes away.

On September 22, 2015, in the early afternoon, Laguatan emailed Ferris, urging him to hasten preparation of the new will, stating Follosco was to undergo a serious medical procedure the next day. He wrote, "His doctors say that his survival is at constant risk. [¶] I hate to rush but getting his will done is much needed and so important for him to sign before it's too late." Ferris responded, "I will prepare his will today."

In preparing the new will, Ferris relied on the holographic will, Laguatan's email, and his conversations with Laguatan. He admitted taking the dispositive provisions of the new will directly from Laguatan's email. Ferris never met or asked to meet Follosco in person. Ferris never spoke to Follosco to confirm his wishes. Ferris acknowledged he followed Laguatan's directions for the new will based on his personal relationship with Laguatan.

That evening around 9:00 p.m., Follosco executed the new will. Laguatan and his wife were present, as were Laguatan's close friend Rodel Rodis and his son Carlo Rodis, who were the two attesting witnesses. Laguatan read aloud to Follosco the new will. Follosco signed it, followed by the witnesses.

The new will revoked Follosco's holographic will. It named Laguatan sole executor, rather than a co-executor with the Pablos. Under the new will, the gifts to the Pablos were reduced. Also, the new will no longer left the residue to be split between the Pablos and other named individuals but rather provided: "If all of my assets are not completely disposed of after payment of all my lawful debts and distribution of the Specific Gifts listed above, I give the residue of my estate to TEODORO LAGUATAN

whom I completely trust to manage and dispose of [the] estate according to guidelines relating to Christian humanitarian charitable principles which we both agree on and accede to." No oversight provisions or instructions governing distribution of the residue were included. Laguatan testified no oversight was intended because Follosco trusted Laguatan completely.

Follosco's condition deteriorated. After more than two weeks in the hospital, he was transferred to hospice care, and he died on October 3, 2015.

On October 13, 2015, Laguatan petitioned for probate of Follosco's will. The Pablos objected and petitioned for probate of the earlier holographic will. Laguatan objected to their petition.

Following a five-day bench trial, the trial court issued a statement of decision denying Laguatan's petition and sustaining the Pablos' objections on the grounds of undue influence and lack of testamentary capacity. The trial court found that under Probate Code section 21380[1], the new will made a donative transfer to Laguatan and that the will was drafted by Laguatan, which triggered the conclusive presumption of undue influence. In addition, the trial court awarded the Pablos attorney fees in the amount of $180,285.25 and expert costs in the amount of $24,755.60. Laguatan separately appealed the judgment denying his petition and the post-judgment award of fees and costs, and we consolidated both appeals.

DISCUSSION

A. Invalidation of New Will (Appeal No. A152115)

1. Standard of Review

" ' "In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.]" ' " (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1102.) Further, "we do not evaluate the credibility of the

[1] All statutory references are to the Probate Code.

witnesses. [Citation.] Rather, 'we defer to the trier of fact on issues of credibility.' [Citation.]" (*Estate of O'Connor* (2017) 16 Cal.App.5th 159, 163.)

2. Undue Influence (Common Law)

Laguatan argues the trial court erred in applying the presumption of undue influence under common law.

A will is invalid under the common law if procured by the undue influence of another. (*Rice v. Clark* (2002) 28 Cal.4th 89, 96 (*Rice*).) Ordinarily, the person contesting the validity of a will bears the burden of proving undue influence. (§ 8252, subd. (a).) However, "a presumption of undue influence, shifting the burden of proof, arises upon the challenger's showing that (1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in procuring the instrument's preparation or execution; and (3) the person would benefit unduly by the testamentary instrument." (*Rice*, *supra*, 28 Cal.4th at p. 97.) If the presumption of undue influence applies, the burden of proof shifts to the proponent to show the absence of undue influence. (*Estate of Gelonese* (1974) 36 Cal.App.3d 854, 863 (*Gelonese*).) "It is the general rule that if the whole will is the result of the presence of undue influence, the will is totally invalidated." (*Estate of Molera* (1972) 23 Cal.App.3d 993, 1001.) Whether the common law presumption of undue influence arises and was rebutted are questions of fact that we review for substantial evidence. (*Estate of Auen* (1994) 30 Cal.App.4th 300, 311 (*Auen*), superseded by statute on other grounds as stated in *Rice*, *supra*, 28 Cal.4th at p. 97.)

Substantial evidence supported the trial court's findings with respect to each of the three elements that give rise to the presumption of undue influence.

a. Confidential Relationship

A confidential relationship "may be said to exist whenever trust and confidence is reposed by one person in the integrity and fidelity of another." (*In re Cover's Estate* (1922) 188 Cal. 133, 143.) Laguatan testified that he and Follosco were "very close," that Follosco told him "'I trust you more than anybody else,'" and that Follosco "trusted me completely and gave me discretion." Laguatan's own briefs attest to this confidence,

observing that he and Follosco "were very close friends" who "deeply trusted each other." Nonetheless, Laguatan contends "there was no lawyer-client fiduciary relationship between them before [Follosco] signed the new will," and suggests this first element cannot be satisfied as a result. He provides no authority to support this point, so we do not consider it. (*DP Pham LLC v. Cheadle* (2016) 246 Cal.App.4th 653, 674 [appellant forfeits argument not supported with relevant legal authority].) Even so, Laguatan posits that they may have had a fiduciary relationship based on their close friendship. As a friend who drafted the September 2015 will, Laguatan cannot reasonably deny owing Follosco a fiduciary duty. (*Estate of Baker* (1982) 131 Cal.App.3d 471, 480; cf. *Magee v. State Bar of Cal.* (1962) 58 Cal.2d 423, 430, 433.)

b. Active Procurement

There was substantial evidence Laguatan was active in procuring the new will. He was the sole person to have discussed its dispositive terms with Follosco. He alone took notes of the terms as dictated to him by Follosco; he arranged for Ferris to put it into final form; he prepared a detailed email to Ferris setting forth the terms of the new will, including certain phrases to use; he read the will aloud to Laguatan; and he selected his close personal friend Rodis and Rodis's son to witness the execution of the will. In light of this evidence, it is inconsequential that Laguatan did not initiate the creation of the new will, or that Follosco summoned him to the hospital to seek his help. This evidence also controverts Laguatan's assertion that his role was limited to "merely [taking] dictation" and "[giving] this info to the probate lawyer who drafted the new Will." We will not overlook all of Laguatan's actions simply because Ferris prepared the final version of the instrument. (See *Auen*, *supra*, 30 Cal.App.4th at p. 307 [attorney was an active participant in drafting will where she was the source of information relied upon by another attorney who drafted the instrument].)

c. Undue Profits

Notwithstanding Laguatan's contention that he did not unduly benefit from the will, there was ample evidence he did. Under the holographic will, Laguatan received

nothing. Under the September 2015 will, Laguatan was named the sole beneficiary of the entire residue.

Laguatan disputes that the will unduly benefits him. He contends "[n]o outright gift is given to him," "[h]is main function is to give [Follosco's] residue to certain charitable institutions," and "[h]e does not get a single cent." We disagree. Even if the intent was to direct the residue to charity, there are no charities specifically identified. The will's express language does not contain specific direction regarding how to use or spend the residue. (See *In re Kearns' Estate* (1950) 36 Cal.2d 531, 536 (*Kearns*) [where "the person directed to carry out the wishes of the testator is both executor and legatee, the courts in construing the effect of the language have refused to follow the strict rule which imposes a mandatory duty on the executor and have apparently treated the words as being addressed to him in his capacity as legatee].") Rather, the provision states he was entrusted to "manage and dispose of the estate in accordance with Christian humanitarian principles" which are undefined and subject to multiple meanings and interpretations. Laguatan has the unhindered ability under the will to determine the recipients, the amount of the gifts, and when any portion of the residue is given to any charity. Since the bequest of the residue did not mandate how Laguatan was to dispose of it, it resulted in a gift to him.

d. Rebuttal

As we noted, once the presumption of undue influence applies, the burden of proof shifts to the proponent to show the absence of undue influence. (*Gelonese, supra*, 36 Cal.App.3d at p. 863.) The trial court found Laguatan failed to rebut the presumption. In his opening brief, Laguatan does not challenge this finding on appeal and presents no argument that he rebutted the presumption of undue influence. Instead, he limited his argument to maintaining that the presumption never arose in the first place. In his reply, Laguatan relies on the daily medical records from Follosco's hospitalization to show that he was at times alert and oriented. We will not consider arguments raised for the first time in reply (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11), and even if we did, the medical records would not effectively rebut the presumption.

The trial court properly applied the common law presumption of undue influence. Substantial evidence supported all three prongs giving rise to the presumption and Laguatan failed to rebut it. The trial court did not err in invalidating the September 2015 will in its entirety.

3. Probate Code Section 21380

Notwithstanding our conclusion above, which provides sufficient grounds to affirm the trial court's judgment, we must also consider the statutory grounds the court relied on to decide against Laguatan because the ruling allowed the Pablos to seek attorney fees.

Laguatan argues the trial court erred when it relied on section 21380 to invalidate the will. He contends the irrebuttable presumption in section 21380 that he exerted undue influence on his friend in the creation of the new will should not have applied.

Section 21380 "prohibits donative transfers to broad categories of persons who, because of their relationship with the [testator], might exercise undue influence." (*Butler v. LeBouef* (2016) 248 Cal.App.4th 198, 208 (*Butler*).) As relevant here, the statute provides: "(a) A provision of an instrument making a donative transfer to any of the following persons is presumed to be the product of fraud or undue influence: [¶] "(1) The person who drafted the instrument. [¶] . . . [¶] "(b) The presumption created by this section is a presumption affecting the burden of proof. The presumption may be rebutted by proving, by clear and convincing evidence, that the donative transfer was not the product of fraud or undue influence. [¶] (c) Notwithstanding subdivision (b), with respect to a donative transfer to the person who drafted the donative instrument, . . . the presumption created by this section is conclusive." (§ 21380.)

We review the interpretation of a statute de novo. (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1123; *Estate of Odian* (2006) 145 Cal.App.4th 152, 162.) However, we review the trial court's factual findings for substantial evidence. (*Butler, supra*, 248 Cal.App.4th at p. 211.)

The trial court found the new will made a "donative transfer" to Laguatan and that he "drafted" the instrument within the meaning of subdivision (a)(1). Neither finding was erroneous.

a. Laguatan Received a "Donative Transfer" Under the New Will.

The only published opinion which closely examines a "donative transfer" is *Jenkins v. Teegarden* (2014) 230 Cal.App.4th 1128 (*Jenkins*). There, the decedent's quitclaim of his house to his caregiver was challenged by the trustee and beneficiary of the decedent's trust. (*Id.* at p. 1130.) The trustee argued the transfer should be voided as a donative transfer. (*Id.* at p. 1134.) The court considered the meaning of "donative transfer" as a matter of first impression. (*Id.* at p. 1142.) The court observed there was no statutory definition, and the statute was ambiguous. (*Id.* at pp. 1138-1139.) After reviewing the legislative history, the *Jenkins* court noted the law "was intended to invalidate a gift to an attorney drafter ' "when the circumstances would support an inference of wrongdoing." ' " (*Id.* at p. 1141.) It concluded that "donative transfer" "include[d] not only a transfer for zero consideration, but also a transfer for unfair or inadequate consideration." (*Id.* at p. 1142.) The test for inadequate consideration was not whether the transfer exceeded the value of the consideration, but whether the consideration received was fair and reasonable under the circumstances. (*Ibid.*)

Here, we have already explained that the bequest of the residue was a gift to Laguatan. There was also substantial evidence to support the conclusion it was a donative transfer under section 21380. The new will states: "If all of my assets are not completely disposed of after payment of all my lawful debts and distribution of Specific Gifts listed above, *I give the residue of my estate to TEODORO LAGUATAN* whom I completely trust to manage and dispose of estate according to guidelines relating to Christian humanitarian charitable principles which we both agree on and accede to." (Italics added.) Laguatan was named the sole beneficiary of the estate's residue. There was no evidence he provided any consideration for the bequest, effectively making the residue a gift. This was sufficient evidence of a donative transfer.

Laguatan argues no part in the new will makes the transfer to him donative. He says he receives nothing under the new will, arguing the residue provision "expresses no donative intent to [him] for his personal financial benefit but simply assigns the responsibility to him 'to manage and dispose' for the benefit of others according to Christian humanitarian charitable principles." We have addressed these arguments above. (See *supra*.) The will's express language does not require Laguatan " 'to manage and dispose' . . . *for the benefit of others*," as he argues. Rather, the ambiguous provision entrusting him to "manage and dispose of the estate in accordance with Christian humanitarian principles" gives Laguatan complete discretion regarding how to use or spend the residue.

Laguatan likens his role under the new will to "that of a trustee," not a beneficiary. The comparison is inapt. For Laguatan to resemble a trustee, something akin to a trust would have to be included in the terms of the new will. "To impose a trust upon property bequeathed and devised to [a person], it must appear that the testator intended to impose mandatory duties upon him." (*In re Collias' Estate* (1951) 37 Cal.2d 587, 589.) Ordinarily, " ' "a mere request, or an expression of hope or confidence or expectation, does not import a command." ' " (*Ibid.*; see also *Kearns, supra*, 36 Cal.2d at p. 536 [It is settled law in California that "if the intention of the testator is to leave the whole subject as a matter of discretion to the good will and pleasure of the legatee, and if his directions are intended as mere moral suggestions to aid that discretion but not absolutely to control or govern it, the language cannot be held to create a trust."].)

As we have observed, the new will's language imposed no mandatory duties on Laguatan with respect to the residual estate. While Laguatan was designated the executor of the new will, as to the residue, he was a beneficiary, or legatee. In this capacity, the guidance on managing the residue were not commands that he was bound to follow. (*Kearns, supra*, 36 Cal.2d at pp. 534-535.) This view is underscored by Laguatan's repeated testimony that he was given absolute discretion over the residue. Since that discretion was indisputably left to Laguatan and the "Christian humanitarian principles"

were "mere moral suggestions to aid him in exercising that discretion," no trust was created and he was never made a trustee.

Laguatan's reliance on *In re Marti's Estate* (1901) 132 Cal.666 (*Marti*), is misplaced. There, Marti's contested will stated: " 'Upon the death of my wife, I desire that one half of the property bequeathed to her shall be devised by her to my relatives.' " (*Id.* at p. 671.) The court considered whether Marti's wife was "the beneficiary, or merely a trustee for others, of the gift bestowed upon [her]; whether the wish or desire or recommendation that is expressed by the testator is meant to govern the conduct of the party to whom it is addressed, or whether it is merely an indication of that which he thinks would be a reasonable exercise of the discretion of that party, leaving it, however, to the party to exercise [her] own discretion." (*Id.* at p. 669.) The court concluded the bequest fell "far short of a command or a direction, and [was] rather in the nature of an expression of the testator's feelings, and a suggestion or recommendation to be considered by her in making a testamentary disposition of her estate." (*Id.* at p. 671.) It concluded Marti's wife was entitled to the entire residue of the estate, free from any limitation or trust. (*Id.* at p. 672.) *Marti* supports our conclusion.

Laguatan also cites *In re Hughes' Estate* (1957) 148 Cal.App.2d 782 (*Hughes*), but that case is distinguishable. There, the testatrix's contested will bequeathed the residue of her estate " 'to H. M. S. Richards, Box 155, Los Angeles (53), California, for his broadcasting work.' " (*Id.* at p. 783.) Richards, a religious broadcaster, argued the gift was a reward to him personally for his past contributions to religious broadcasting and not a gift in trust obligating him to use the money for charitable purposes. (*Id.* at p. 784.) The court concluded the residuary clause was not intended for Richards's personal benefit but rather was for the specific purpose of carrying on his religious broadcasting work and sufficiently created a trust for that purpose. (*Id.* at pp. 784-785.) Because the residuary clause was immediately preceded by a sizable gift to a church, the court concluded these "were connected together in the [testatrix's] mind, and . . . both were a part of a single purpose which she was seeking to accomplish." (*Id.* at p. 785.) Further, the testatrix had no relationship with Richards that "would make him the natural

object of her bounty." (*Ibid.*) Here, Follosco and Laguatan shared a 30-year friendship that would have made a gift to Laguatan unsurprising. We also can discern no overriding charitable purpose to the new will from our review of the instrument as a whole.

b. Laguatan "Drafted" the New Will.

As noted above, any provision in a will which makes a donative transfer to "the person who drafted the instrument" is presumed to be the product of fraud or undue influence. (§ 21380, subd. (a)(1).) The verb "draft" means "[t]o write or compose (a plan, letter, report, etc.) in its initial form, which will need to be revised and polished before it is finished." (Black's Law Dictionary (10th ed. 2014) p. 601.) According to the Oxford English Dictionary, "draft" is "to make a draft or rough copy of (a document); to draw up in a preliminary form, which may be afterwards perfected." (Oxford English Dictionary Online <https://oed.com/view/Entry/57399?rskey=Mpg5Yg&result=2#eid> [as of Sep. 30, 2019].) One court interpreting section 21380 and its predecessor understood drafting to mean "the acts (typically performed by attorneys) of creating or composing the contents of the document." (*Estate of Swetmann* (2000) 85 Cal.App.4th 807, 819 (*Swetmann*).) Drafting also consists of "directly participat[ing] in the instrument's physical preparation." (*Rice*, *supra*, 28 Cal.4th at p. 103.)[2]

There was substantial evidence Laguatan drafted the September 2015 will. The new will was the product of a meeting between Follosco and Laguatan, at which no one else was present. Follosco told Laguatan the changes he wanted made to his will, and Laguatan took notes of his wishes. Within a day, Laguatan converted his notes to an email he sent to Ferris to "put in the proper format." The email enumerated the new will's dispositive terms, which Ferris admitted he adopted from Laguatan's email. A simple comparison of the two documents readily substantiates this. In the email, Laguatan specifically asked Ferris to "[i]nclude these phrases: [¶] . . . [¶] Residuary estate—if on the other hand I still have some assets or residue left that has not been

[2] *Swetmann* interpreted section 21350, which the Legislature replaced with section 21380 in 2010, "restat[ing] the substance" of the former statute and making a few minor changes not applicable here. (§ 21380, Law Revision Com. com.)

disposed or some undiscovered assets, I leave these to my primary Executor Atty. Teodoro (Ted) Laguatan whom I completely trust—to manage and dispose of these using his judicious prudent judgment according to guidelines relating to Christian humanitarian charitable principles which we both agree on and accede to." In the new will, the provision regarding the residue states: "If all of my assets are not completely disposed of after payment of all my lawful debts and distribution of the Specific Gifts listed above, I give the residue of my estate to TEODORO LAGUATAN whom I completely trust to manage and dispose of estate according to guidelines relating to Christian humanitarian charitable principles which we both agree and accede to." It is clear that the substance of the new will came from Laguatan's email. The origin is underscored by Ferris's testimony that he relied on Laguatan's email and his conversations with Laguatan to prepare the final version of the new will. Further, Ferris never met Follosco, never spoke to Follosco, and never confirmed with Follosco that the terms of the new will reflected his actual wishes. There was substantial evidence for the trial court to conclude Laguatan drafted the new will.

Laguatan disputes this conclusion because the meeting that led to the new will was initiated by Follosco, and he was only following his friend's instructions. This is not persuasive. Who initiated that meeting is not relevant to who drafted the instrument that ultimately emerged from it. What matters is whether Laguatan engaged in the act of "creating or composing the contents of the document." (*See Swetmann, supra*, 85 Cal.App.4th at p. 819.) There is substantial evidence that he did.

Laguatan contends "an independent probate attorney" drafted the new will. He says "he took the exact information dictated to him by [Follosco] and without any changes gave this to Robert Ferris, a probate lawyer for purposes of drafting." He adds, "Mr. Ferris testified in court that he drafted the new Will." These, too, are not persuasive. Even if Laguatan meticulously transcribed the new will, as dictated to him by Follosco, we would still consider Laguatan the drafter. Based on the plain meaning of "draft," Laguatan was the one who composed the new will in its initial or preliminary form. (Black's Law Dictionary (10th ed. 2014) p. 601; Oxford English Dictionary Online

<https://oed.com/view/Entry/57399?rskey=Mpg5Yg&result=2#eid> [as of Sep. 30, 2019].) Further, notwithstanding Ferris's subjective understanding of his role, the objective evidence shows Laguatan "directly participated" in the will's preparation and "compos[ed] the contents" of the document. Even if Ferris's work in finalizing the new will makes him a drafter under section 21380, that does not mean Laguatan did not also draft the instrument. (See *Rice, supra,* 28 Cal.4th at p. 105 [multiple people may participate in drafting a will].)

Since the trial court did not err in finding Laguatan drafted a will which included a donative transfer to him, the conclusive and irrebuttable presumption of undue influence appropriately applied to the donative transfer provision (§ 21380, subds. (a), (c)) and rendered it invalid.[3] In light of this conclusion, we do not need to address the parties' arguments under section 21380, subdivision (a)(2).[4]

B. Attorney Fees (Appeal No. A153350)

In light of our determination that the trial court properly applied the presumption under section 21380, we proceed to consider Laguatan's appeal of the trial court's order awarding the Pablos attorney fees and costs.

Section 21380, subdivision (d) provides that "[i]f a beneficiary is unsuccessful in rebutting the presumption, the beneficiary shall bear all costs of the proceeding, including reasonable attorney fees." (§ 21380, subd. (d).) This provision applies to drafters subject to the conclusive presumption under section 21380, subdivision (c). (See *Butler, supra,* 248 Cal.App.4th at p. 211.)

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[3] The Pablos contend if both requirements under section 21380, subdivision (a) are met, "the will is *conclusively* presumed invalid." This expansive view of the consequences of such findings is not in line with the plain language of section 21380, which limits the presumption to the particular provision making the donative transfer. Accordingly, contrary to the Pablos' assertion, affirming the trial court's ruling solely under section 21380 would not have been sufficient.

[4] Section 21380, subdivision (a)(2) prohibits donative transfers to "a person who transcribed the instrument or caused it to be transcribed and who was in a fiduciary relationship with the transferor when the instrument was transcribed." (§ 21380, subd. (a)(2).) The trial court also found Laguatan fell into this category.

"We review the amount of attorney fees awarded for abuse of discretion. [Citation.] An attorney fee award will not be set aside 'absent a showing that it is manifestly excessive in the circumstances.' " (*Mallard v. Progressive Choice Ins. Co.* (2010) 188 Cal.App.4th 531, 544.) "A ruling amounts to an abuse of discretion when it exceeds the bounds of reason, and the burden is on the party complaining to establish that discretion was abused." (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 450.) The trial court's decision " ' "will only be disturbed when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice." ' " (*Pelligrino v. Robert Half Internat., Inc.* (2010) 182 Cal.App.4th 278, 287-288.)

After prevailing on their probate claims, the Pablos requested $214,861.94 in a memorandum of costs. This included $179,989.50 in attorney fees and $24,755.60 in expert witness fees. Laguatan moved to tax costs, and the Pablos moved for attorney fees. They also sought an additional $8,245 in fees related to the motion for attorney fees. Over Laguatan's opposition, the trial court awarded the Pablos $180,285 in attorney fees, after reducing $7,950 from the requested fee award due to duplicative serves. The trial court found the fees incurred were in response to Laguatan's own actions, which included a meritless summary judgment motion and meritless evidentiary objections, requesting two trial continuances, and ignoring overtures from opposing counsel to enter stipulations of undisputed facts that would have limited a needlessly long trial. The trial court also denied Laguatan's motion to strike or tax costs, allowing the Pablos the $24,755.60 requested for their medical expert.

There is no basis for us to conclude the trial court abused its discretion in awarding the $180,285 in attorney fees. "In awarding attorney fees, the court has broad discretion to determine the reasonableness of the fees claimed in light of a number of factors, including the nature of the litigation, its difficulty, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances. [Citation.] 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to

review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." ' [Citations.]" (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 873.) Here, the Pablos submitted detailed billing sheets and declarations in support of the motion for attorney fees. The record also supports the trial court's finding that Laguatan's litigation choices generated a great deal of the attorney work the Pablos incurred. The fee award was not unreasonable.

Laguatan advances a number of reasons the fee award was excessive. He says there were too many timekeepers, the rates of both attorneys and paralegals were inflated, the hours claimed were "absurd," the invoices consisted of vague time entries or inappropriate block billing and included non-compensable clerical work. "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.) Laguatan does not make the required showing. There is no evidence that the hourly rates were excessive for the services rendered. Nor is there evidence that counsels' hours were absurd. He points to no specific invoice in the record in support of any of his claims. The trial court did not abuse its discretion in awarding the attorney fees.

Separately, Laguatan contends the Pablos were not entitled to the $8,245 in fees awarded for litigating the post-judgment motion for fees and costs because there was no documentary evidence substantiating the request. No. The record includes a declaration from the Pablos' counsel explaining the work she performed on the fees and costs motion, which also included reviewing Laguatan's opposition, preparing the reply, and appearing at the hearing. The trial court did not abuse its discretion in awarding these fees.

As for disputed costs, Laguatan argues the $24,755.60 awarded to the Pablos for their medical expert "are excessive and unreasonable and should be considerably

reduced."[5] But Laguatan provides us no grounds to conclude the cost award was excessive or an abuse of discretion. Laguatan contends the expert did not explicitly explain what he did in the hours he submitted for billing. But the record includes the expert's invoices showing the dates, hours, hourly rates, and subject matter of his work. Laguatan also complains that the expert billed for appearances at trial on two separate dates, even though he testified on only one of them. Again, the record shows Mueller was scheduled to testify on the third day of trial and prepared for and attended trial that day. However, before he was called to testify, Laguatan requested a continuance. When trial resumed over four months later, Dr. Mueller had to prepare for and attend a second trial day and testify. Laguatan was the reason for the two appearances. The trial court did not abuse its discretion in awarding the requested expert fees.

DISPOSITION

The judgment and the post-judgment order awarding fees and costs in favor of the Pablos are affirmed. The Pablos shall also recover their costs and attorney fees on appeal.

[5] Since the $24,755.60 in expert costs are the only costs Laguatan offers any argument against, these are the only costs of the overall $27,427 cost award we address.

_____
Siggins, P.J.

WE CONCUR:

_____
Petrou, J.

_____
Wick, J.*

* Judge of the Superior Court of Sonoma County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.